



Idaho Department of Environmental Quality **DRAFT §401 Water Quality Certification**

September 25, 2006

NPDES Permit Numbers:

IDG-13000-0 Aquaculture Facilities in Idaho, subject to Wasteload Allocations under Selected Total Maximum Daily Loads

IDG-13100-0 Cold Water Aquaculture Facilities in Idaho (not subject to Wasteload Allocations)

IDG-13200-0 Fish Processors associated with Aquaculture Facilities in Idaho

ID-002826-6 Epicenter Aquaculture

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1), and Idaho Code §§ 39-101 et.seq., and 39-3601 et.seq., the Idaho Department of Environmental Quality (IDEQ) has authority to review National Pollution Discharge Elimination System (NPDES) permits and issue a water quality certification decision.

IDEQ certifies that if the permittees comply with the terms and conditions imposed by the above-referenced permits along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharges will comply with the applicable requirements of Sections 208 (e), 301, 302, 303, 306, and 307 of the Clean Water Act, including the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02).

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations or permits, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

CONDITIONS THAT ARE NECESSARY TO ASSURE COMPLIANCE WITH WATER QUALITY STANDARDS

Wasteload Allocations

As required by Section 303 of the CWA, wasteload allocations (WLAs) are established at levels necessary to meet water quality standards in those waterbodies where water quality standards are not being met. Additionally, sections 301 and 402 of the CWA requires permits to contain effluent limitations that are deemed necessary to meet water quality standards. Therefore, the general NPDES permits must include a provision that requires the inclusion of any WLAs that are approved after the finalization of the permit where such WLAs are more stringent than the technology-based effluent limitations.

ALTERNATIVE LIMITATIONS

The following subsections discuss how the permit can be made less stringent and still comply with Idaho WQS.

Best-Professional Judgment Technology Based Limits versus Wasteload Allocations

EPA has determined technology-based limits based upon best professional judgment are more stringent than some of the facility wasteload allocations that have been developed through the total maximum daily load process. IDEQ asserts that using EPA approved WLAs as the effluent limitations instead of the TBLs would comply with Idaho water quality standards.

Mixing Zones

Currently, the fish processor permit sets end-of-pipe criteria for total residual chlorine. Idaho water quality standards allow for consideration of a mixing zone when developing permit effluent limitations. Facilities may contact IDEQ if they are interested in being granted a mixing zone for their discharge. After a chemical, physical, and biological appraisal of the receiving water and discharge, IDEQ will determine the applicability of a mixing zone. If DEQ determines that a mixing zone is appropriate, EPA has the authority to revise effluent limitations in the permit.

Pollutant Trading

The draft permits stipulate that a buyer can only be located downstream of the seller. DEQ's Pollutant Trading Guidance (2003) allows buyers to be located upstream of a seller as long as the ambient water quality between the parties is not adversely impacted. The requirement that a buyer can only be located downstream of the seller can be omitted, and there would still be reasonable assurance that the permits would comply with Idaho WQS. In addition, the permit should allow for trading between point and nonpoint sources as allowed in DEQ's Pollutant Trading Guidance document.

RIGHT TO APPEAL FINAL CERTIFICATION

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5), and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within 35 days of the date of this certification.

Questions regarding the actions taken in this certification should be directed to Johnna Sandow, State Office IDEQ at (208) 373-0163 or Johnna.Sandow@deq.idaho.gov.